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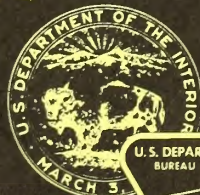
Lease by Application

A Guide to Leasing
Federal Coal in the East



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U.S. DEPARTMENT OF THE INTERIOR

(Bureau of Land Management)

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INTRODUCTION

This brochure provides a brief explanation of the elements of the new Federal coal management program, especially as it applies to Federal coal in the eastern states. The brochure also outlines the procedures and requirements to be followed in obtaining a Federal coal lease. It has been prepared to provide general information to interested parties who may not be familiar with the

Federal coal management program. The brochure is not intended to explain all procedures and requirements in detail. Prospective Federal coal lease applicants should consult the Federal coal management regulations (43 CFR 3400) and contact the Bureau of Land Management's (BLM's) Eastern States Office at the address listed elsewhere in the brochure for further information.

GENERAL OVERVIEW FEDERAL COAL MANAGEMENT PROGRAM

On June 1, 1979, Interior Secretary Cecil D. Andrus established a new program to improve the management of coal reserves owned by the Federal Government. This program will enable the Department of the Interior (DOI) to offer Federal coal resources for competitive lease sales to meet anticipated demands on a regional basis while ensuring that the leasing and subsequent production of coal will take place in an environmentally acceptable manner on land best suited for this activity. Apart from the regional sale process, the new program will also make coal available for competitive leasing to meet emergency situations.

Most of the competitive coal leasing under the new Federal coal management program will take place through the regional lease sale process (see 43 CFR 3420). For this process the nation has been divided into 12 coal production regions (Figure 1). Of the 12 regions, only 8 have significant Federal coal resources. These are the Green River-Hams Fork, Uinta-Southwestern Utah, Powder River, San Juan River, Fort Union, and Denver-Raton Mesa Coal Production Regions and the Alabama and Oklahoma subregions of the Southern Appalachian and Western Interior Coal Production Regions, respectively. The DOI, with the assistance of other Federal and state agencies, industry, and the public, will identify and select tracts within each region to be offered for competitive lease sale to meet regional coal production targets.

The regional lease sale process consists of four major elements:

1. *Land Use Planning (LUP)*—This element consists of the identification of coal lands and the application of unsuitability criteria, review of resource tradeoffs, and consultation with surface owners to identify areas acceptable for further consideration for coal leasing. (See Bibliography for land-use planning regulation reference). The purpose of LUP is to qualify areas for detailed consideration in activity planning.
2. *Regional Leasing Targets*—The DOI will set regional leasing targets indicating the amount of coal to be leased in each region based on the Department of Energy's (DOE's) production goals to ensure that an adequate number of tracts are made available to meet these goals.
3. *Coal Activity Planning*—This occurs after land-use planning is completed and consists of: (a) tract delineation to identify specific leasing tracts, (b) site-specific environmental analysis of each tract, (c) tract ranking to rate the tracts in priority order, (d) selection of the tracts that will be proposed for sale to meet the production goals, and (e) the preparation of a regional coal environmental impact statement.

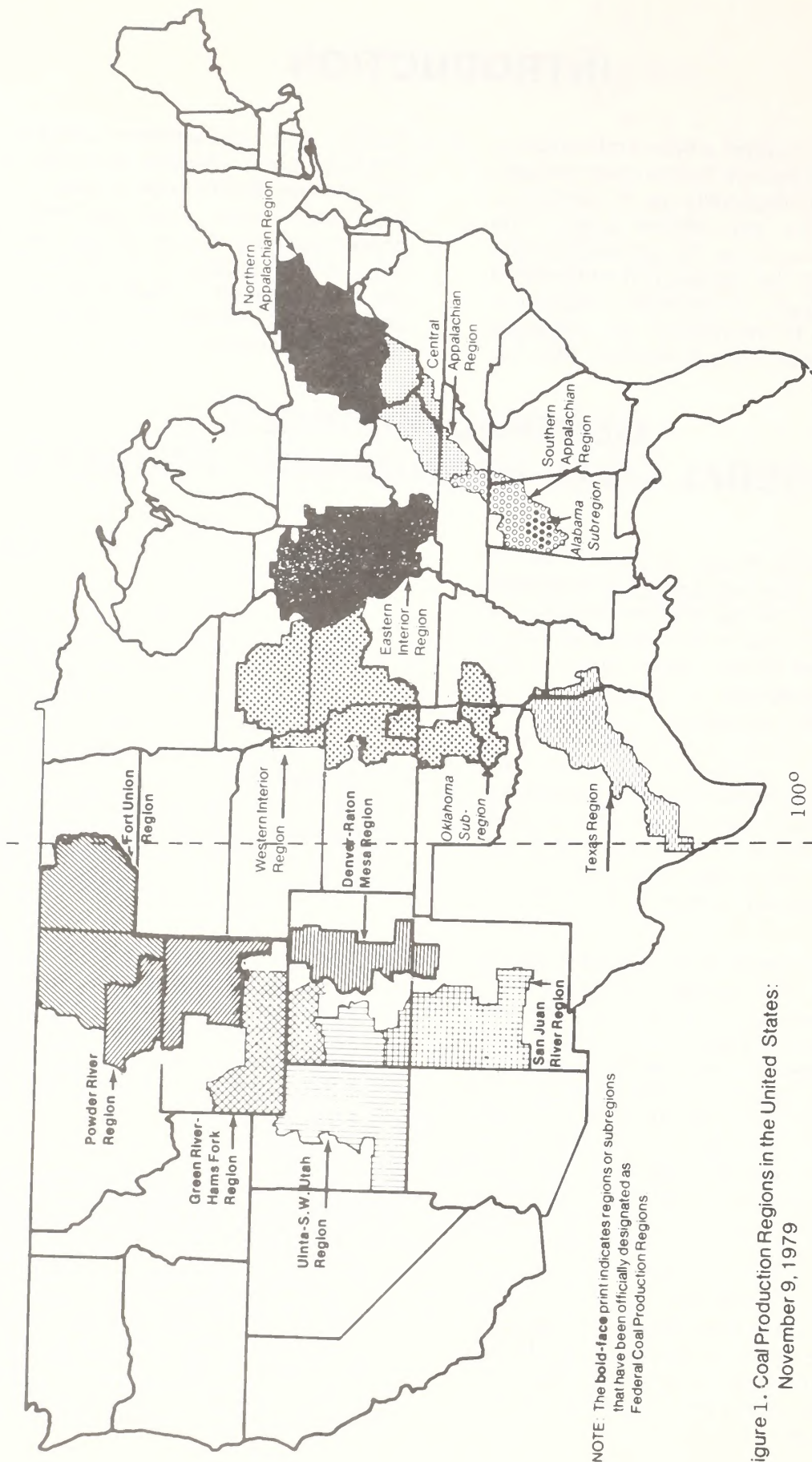


Figure 1. Coal Production Regions in the United States:
November 9, 1979

4. *Presale and Sale Procedures*—This element consists of activities leading to the lease sales, such as the determination of the fair market value of each tract; consultation with state governments, the Attorney General, and other surface management agencies and Indian Tribes where applicable; and the scheduling and advertisement of the sales.

Competitive coal leasing may also take place, in certain specific situations, in response to coal lease applications submitted by prospective lessees to the BLM (see 43 CFR 3425). The lands covered by such applications are subject to land-use planning and environmental analysis, but will not undergo the coal activity planning process.

In coal production regions west of the 100th meridian west longitude, where the Federal coal generally occurs in large, consolidated blocks of land, leasing by application is intended only to supplement the regional lease sale program. Leasing by application in the western coal production regions will take place only to meet emergency situations where an operating mine requires additional reserves to avoid closure or where a small tract of Federal coal will be bypassed if not mined as part of an ongoing operation. No more than 8 years of coal reserves based on the applicant's average annual production level may be obtained under an emergency lease.

East of the 100th meridian, leasing by application is expected to constitute a major part of the leasing program since the Federal coal in private and state lands generally occurs in small, scattered tracts making activity planning on a regional scale impractical. The competitive coal leasing program may be considered

where there is sufficient Federal coal under the jurisdiction of the Forest Service (FS) to justify the development of land-use planning and coal activity planning. Therefore, lease applications for all areas east of the 100th meridian, except where regional lease sales are planned, may be submitted without regard to emergency situations. Such lease applications may be included in a logical mining unit (LMU) containing up to 40 years of recoverable coal reserves. In regions east of the 100th meridian where regional lease sales are planned, however, leasing by application is restricted to the same emergency situations as in western coal regions.

A Federal coal lease grants to the lessee the exclusive right to mine and dispose of all recoverable coal covered by the lease together with the right to construct all facilities and use as much of the surface as is necessary to recover the coal, provided the lessee or a designated representative submits, to the DOI's Office of Surface Mining Reclamation and Enforcement (OSM) and has approved a mining and reclamation plan within 3 years from the effective date of the lease. If a mining plan is approved, all operations must be conducted in accordance with the approved mining plan.

Additional information on the Federal coal management program may be obtained from the BLM's Eastern States Office.

The remainder of this brochure explains the procedures for leasing by application in the eastern states, with separate sections addressing small business set-asides and coal exploration licenses.

LEASING BY APPLICATION

The BLM administers the leasing of all federally-owned coal for the DOI. Much of this coal is under BLM administered surface, but many millions of tons, especially in the eastern states, are not. For example, in some areas, Federal coal underlies surface managed by the FS, and in others, it underlies privately-owned or state-owned surface.

Anyone interested in leasing Federal coal in the eastern states (Alabama, Arkansas, Indiana, Iowa, Kentucky, Maryland, Michigan, Missouri, Ohio, Pennsylvania, Virginia, and West Virginia) must submit an application to the BLM's Eastern States Office. Before filing an application, however, it is suggested that the prospective applicant contact the surface owner or surface management agency (if other than the BLM) to determine whether the surface owner or surface management agency has any concerns about mining on the land in question. While this step is not required prior to submission of an application, an applicant must eventually obtain the consent of any private qualified surface owners before the BLM may issue a lease for land on which surface coal mining operations will occur (see 43 CFR 3425.4(a)(3) and 43 CFR 3427). Likewise, the surface management agency must agree to mining before the BLM can issue a lease. Therefore, determining the opinions of the surface owners or the surface management agency regarding mining prior to submitting an application may avoid unnecessary work and expense.

Most of the Federal coal in the eastern states underlies land managed by the FS. Although surface coal mining is prohibited by law in National Forests east of the 100th meridian, underground mining and surface activities associated with underground mining are permitted. As a surface management agency, the FS has the authority and obligation to ensure that mineral activities on the lands it administers are conducted so as to minimize conflicts with other uses. It is also required to limit damage to surface resources and to ensure that damaged areas are rehabilitated after mining operations have been completed.

Prior to filing a formal application with BLM for lands administered by the FS, the interested party is advised to contact the FS to determine the constraints on mining and the environmental safeguards this agency will apply. Although the application procedure for forest lands does not differ substantially from other lands, knowledge of the FS organization will aid the applicant in determining where to get information while completing the application.

The Eastern and Southern Regions of the FS will be of primary concern to the eastern operator. There are approximately 12 forests per region with an average of 8 districts per forest. The BLM has authority to ensure that an adequate environmental assessment is prepared to determine if the leasing of a specific tract of land is environmentally acceptable. The FS is responsible for assisting in, or may be delegated the authority for, the preparation and evaluation of environmental assessments, applications for exploration licenses, leases, and mining permits.

As mentioned previously, although consultation with surface owners or the surface management agency is advisable, it is not required prior to filing a lease application. Applicants should take the following steps to prepare and file an acceptable application.

- The application must be submitted to:

Bureau of Land Management
Eastern States Office
350 South Pickett Street
Alexandria, Virginia 22304

- The application need not follow a specific format.
- A non-refundable application fee of \$250.00 must be included.
- An application must be filed in triplicate.

The application must contain the following:*

- Applicant's name and address;

* For further detail refer to regulations 43 CFR 3472.2-2.

- Legal description of land using the public land rectangular survey system or metes and bounds, as appropriate;
- Signed statement showing that the applicant does not hold, own, or control leases on more than 46,080 acres in one state, or not more than 100,000 acres in the U.S. at the time of application;
- Signed statement containing the names of all parties of interest in the application;
- Qualification Statement,
 - for an individual: signed statement setting forth citizenship (U.S. citizenship is a requirement);
 - for an association or partnership: certified copy of the articles of association or partnership together with a statement showing (1) the authorization of the association or partnership to hold a lease or license to mine, (2) the names and addresses of members owning or controlling more than 10 percent of an association or partnership with their citizenship and holdings, and (3) the name and authority of the officer acting on behalf of the association or partnership;
 - for a corporation: statement of incorporation, percentage of corporation voting stock and other stock owned by aliens or those living outside the U.S.;
 - if applying for a Small Business Administration (SBA) set-aside: evidence of qualification as a small business coal operator;
 - if there is a legal guardian or trustee involved (no lease may be issued to a minor): copy of the court order showing the authority to act on behalf of the ward or beneficiary and a statement of citizenship of both ward or beneficiary and guardian or trustee;
- Preliminary Environmental Data:
 - maps depicting the physical features of the land under application and the anticipated location of mine facilities, roads, trenches, water sources, overburden or waste storage areas, etc.;
 - narrative description of anticipated level of production, mining method, scope and schedule of operations;
 - description, with maps or aerial photographs, of existing land-uses and other features within and adjacent to lands under application;
 - description of proposed environmental protection measures, such as measures to prevent or control fire, soil erosion, or damage to other natural resources;
 - description of intended use of the coal; and
- Signatures:
 - signature of the applicant is required,
 - if using an attorney-in-fact, the attorney's signature is required.

Applicants should ensure that their applications contain all the required information and that the information is as complete as possible. Processing of the application will be delayed until any missing information has been provided by the applicant. It is especially important that the applicants submit as much preliminary data regarding the anticipated mining operation and related environmental data as possible. This information forms the basis of the environmental assessment prepared by the BLM or the surface management agency. Applicants are encouraged to work closely with the BLM's Eastern States Office to ensure that applications contain all the necessary information.

Once the application with the supporting documents and the \$250.00 filing fee has been received by BLM, the following steps will be taken in processing the application.

- BLM sets up a case file and examines the application to ensure that:
 - lands are properly described,
 - acreage limitations are not exceeded,
 - lands are available for lease, and
 - application contains required information;
- BLM requests a report from the U.S. Geological Survey (GS) on the amount and quality of coal reserves on the land under application;
- BLM obtains consent of surface management agency for leasing of the tract under application;

- BLM or the surface management agency prepares an environmental assessment;
- BLM consults with the surface management agency on:
 - recommended special environmental stipulations,
 - land-use plan and application of unsuitability criteria, and
 - environmental assessment;
- BLM or the surface management agency requests comments on the environmental assessment from the Governor of the state in which the land is located;
- BLM or the surface management agency holds a public hearing to review the environmental assessment;
- BLM requests a report and recommendation from the GS on:
 - the economic value of the coal resource,
 - rental and recommended royalty rate,
 - recommended bonding requirements, and
 - probable mining methods and preliminary maximum economic recovery (MER) of coal;
- BLM or the surface management agency completes final environmental assessment responding to all comments received from the surface management agency, the Governor of the affected state and the public;
- BLM receives GS report and:
 - determines fair market value of the coal,
 - prepares sale notice, and
 - prepares proposed lease;
- Applicant submits written consent obtained from qualified surface owners, if any (may be obtained and submitted earlier, but must be submitted before any action beyond this point can be taken);
- BLM Eastern States Office sends case file to Director of BLM for:
 - DOE concurrence with lease terms and conditions,
 - DOI approval of lease sale;
- BLM schedules sales upon receipt of Departmental approval:
 - publicizes sale notice and
 - sends copies of sale notice to Governor, applicant, GS, OSM, surface owner(s), and other interested parties;
- Lease sale held and high bid announced;
- BLM reviews bids and qualifications of bidders;
- BLM notifies the successful bidder and requests:
 - first year's rental,
 - balance of bonus bid (if not deferred),
 - publication costs,
 - required bonds,
 - information for Attorney General anti-trust review, and
 - four copies of the lease executed by successful bidder;
- BLM sends anti-trust information to Attorney General for 30-day review; and
- If approved by Attorney General, BLM executes lease and forwards copies to lessee, GS, and OSM.

COAL EXPLORATION LICENSES

An exploration license allows private parties to conduct coal exploration on unleased Federal lands (see 43 CFR 3410), including Federal coal underneath privately owned surface. Unless specifically authorized by BLM, the operator cannot remove more than 250 tons of coal during exploration. Removal in excess of 250 tons constitutes a mining operation which requires a mining permit. The exploration license is valid for two years and cannot be extended. However, a licensee may apply for a new license to become effective upon the date of termination of the original license. Exploration activities on unleased Federal coal without an exploration license are prohibited. Exploration licenses can be issued only for unleased Federal coal; exploration on leased land may not be conducted by the lessees without an exploration plan approved by the GS mining supervisor or OSM for an area of approved permit for surface mining and reclamation operations.

Exploration licenses may be granted for up to 25,000 acres in a single state. An application for more than 25,000 acres must be accompanied by a justification for the additional acreage. Separate licenses are required for each state if the land the applicant seeks to explore, regardless of its size, falls in two or more states.

Exploration licensees are required to submit copies of all data (including but not limited to geological, geophysical, and core drilling analyses) obtained during exploration under the license and a description of the methods by which the data were obtained to the GS mining supervisor. This information will be considered confidential by the GS area mining supervisor and will not be made available to the public until the areas involved have been leased. The exploration license does not guarantee that the applicant will receive a lease for the area.

The application process for exploration licenses is similar to the process for leasing by application. The qualification requirements are the same; any person who is qualified to hold a Federal coal lease is also qualified to obtain an exploration license. The major difference between the two procedures is that applicants

for exploration licenses are required to give other parties the opportunity to join in the exploration program, on a proportionate cost sharing basis. This has been incorporated into the system to avoid the duplication of exploration activities in the same area, particularly for environmental protection reasons. Therefore, the application process includes a specific procedure for seeking participation.

The following steps should be followed to prepare and file an acceptable application for an exploration license.

- The application must be submitted to:

Bureau of Land Management
Eastern States Office
350 S. Pickett St.
Alexandria, Virginia 22304

- The application need not follow a specific format.
- An application fee of \$250.00 (non-refundable) must be included.
- Three copies of the exploration plan must be submitted.

The application must include the following:

- Applicant's name and address:
- Legal description of land using the public land rectangular survey system or the metes and bounds system, as appropriate;
- Statement of exception of limitations on acreage if application is for more than 25,000 acres;
- Publication: Notice of Invitation:
 - the applicant must publish a Notice of Invitation once a week for two consecutive weeks in at least one newspaper of general circulation in the area where the land is located,
 - copies of the Notice of Invitation must be filed at the BLM office, to be posted at BLM and published in the *Federal Register* by the BLM,

- respondents to the invitation to participate must notify the officer at BLM and the applicant within thirty (30) days after the notice has been published in the *Federal Register*, and
 - if there are participants, the BLM may require modification of the original exploration plan to accommodate the needs of all participants;
- Before issuance of a license an environmental assessment will be prepared by BLM, incorporating recommendations of the surface management agency;
- Effective date of license:
 - the license will become effective on the date specified by the BLM officer,
 - the license will be valid for two years from its effective date, and
 - licenses will not be extended, but a new license may be applied for and may be issued at the time of the termination of the existing license.

SMALL BUSINESS ADMINISTRATION SET-ASIDE PROGRAM

The DOI, in cooperation with the SBA, is prepared to offer coal leases on Federal lands to small business concerns. The two agencies have agreed that, where a need for such leasing opportunities exists, one or more coal leasing tracts in a regional lease sale may be set aside for competitive bidding at a lease sale to small businesses only. Only enterprises, including corporations, joint ventures or other entities defined as small businesses will be allowed to bid on these small business set-aside tracts. Awards of set-asides will be based on a fair market value determination with consideration of the technological expertise and financial situation of the small business in question.

The SBA has defined, for the purpose of Federal coal lease sales, a small business as one that is independently owned and operated; is not dominant in its field of operation; has, including affiliates, no more than 250 employees; and maintains actual management and control of mining operations at the tract. Any transfer of the lease from the original holder of the set-aside must be to another small business concern.

The DOI and the SBA will be working closely together to identify tracts to be offered as set-asides. No specific criteria for the identification of set-asides have yet been established, although one proposed method being considered is the solicitation of public comment by

the DOI and the SBA.

For leasing by application, a small business operator interested in leasing in a specific area may submit a recommendation to the DOI to have that tract or area established as a set-aside. The DOI will, in turn, consult and work with the SBA to determine if that particular tract can be designated for preferential bidding. In addition, during the process of tract delineation, ranking, and selection leading to issuance of lease sale schedules in the coal production regions, the SBA will have the opportunity to indicate any preference related to size, number, location or production volume of tracts to be set aside for business leasing. The DOI will provide recommendations as necessary to assist the SBA in this determination process.

It is suggested that a coal lease applicant who meets the SBA definition of a small business seek to have any tract or tracts which he or she has identified designated as a small business set-aside. However, even if the tract is declared to be a small business set-aside, all of the requirements described for leasing by application apply. The only substantial difference between the two programs lies in the amount and type of competition for each lease; only small businesses may compete for a set-aside tract, whereas, at present, there is no such restriction for tracts offered for sale under the leasing by application process.

GLOSSARY

1. Fair Market Value:

That amount of cash or the equivalent for which the coal deposit would be sold or leased by a knowledgeable owner willing, but not obligated, to sell or lease to a knowledgeable purchaser who desires, but is not obligated to buy or lease.

2. Logical Mining Unit (LMU):

An area of coal land that can be developed and mined in an efficient, economical, and orderly manner with due regard for the conservation of coal reserves and other resources. An LMU may consist of one or more leases and may include intervening or adjacent non-Federal lands, but all lands in an LMU must be contiguous, under the effective control of a single operator, and capable of being developed and operated as a unified operation with complete extraction of the LMU reserves within 40 years from the date of first approval of a mining plan for the LMU.

3. Maximum Economic Recovery (MER):

A determination as to which coal deposits on the leased lands must be mined by the lessee. This determination is made by the GS mining supervisor after the lease is issued and is based only on the coal that is profitable to mine. MER means, after safety factors are taken into account, the extraction of all portions of the coal deposit within a Federal lease that have a private incremental cost of recovery (including reclamation and opportunity costs) less than or equal to the market value of the coal.

4. Metes and Bounds:

A survey method based on the use of courses and distances to define and measure the exterior boundaries of an irregularly-shaped tract.

5. Public Land Rectangular Survey System:

Survey method in the public land states whereby the land is divided by lines intersecting true north and south so as to form townships 6 miles square; each township is subdivided into 36 sections, each 1 mile square and containing 640 acres more or less.

6. Qualified Surface Owner:

A person or persons (or corporation, the majority stock of which is held by a person or persons who meet the other requirements of this section) who:

- a) hold legal or equitable title to the land surface;
- b) have their principal place of residence on the land, or personally conduct farming or ranching operations upon a farm or ranch unit to be affected by surface coal mining operations, or receive directly a significant portion of their income, if any, from such farming or ranching operations, and
- c) have met the conditions of paragraphs (a) and (b) for a period of at least 3 years prior to the granting of the consent.

7. Surface Coal Mining Operations:

Activities conducted on the surface of lands in connection with a surface coal mine or surface operations and surface impacts incident to an underground mine, as defined in section 701(28) of the Surface Mining Control and Reclamation Act (30 U.S.C. 1291 (28)).

8. Unsuitability Criteria:

Criteria implementing the Federal lands review requirements of Section 522 of the Surface Mining Control and Reclamation Act of 1977 (30 USC 1272) regarding the identification of lands as unsuitable for all or certain specified surface mining operations. The specific unsuitability criteria are contained in 43 CFR 3461.1

REFERENCES

FOREST SERVICE CONTACTS:

SOUTHERN REGION: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Texas, Virginia.

Regional Forester
Forest Service
1720 Peachtree Road, N.W.
Atlanta, Georgia 30309
Telephone: (404) 257-4177

EASTERN REGION: Illinois, Indiana, Ohio, Michigan, Minnesota, Missouri, New Hampshire, Maine, Pennsylvania, Vermont, West Virginia, Wisconsin.

Regional Forester
Forest Service
633 West Wisconsin Ave.
Milwaukee, Wisconsin 53203
Telephone: (414) 363-3600

BLM EASTERN STATES OFFICE CONTACT:

Chief, Division of Lands and Minerals
Bureau of Land Management
Eastern States Office
350 S. Pickett Street
Alexandria, Virginia 22304
Telephone: (703) 235-2844

GEOLOGICAL SURVEY CONTACT:

Area Mining Supervisor
Geological Survey
1725 K. Street, N.W.
Suite 204
Washington, D.C. 20006
Telephone: (202) 254-3137

OFFICE OF SURFACE MINING CONTACTS:

REGION I: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia.

Regional Director
Office of Surface Mining
1st Floor, Thomas Hill Building
950 Kanawha Blvd., East
Charleston, West Virginia 25301
Telephone: (304) 342-8125

REGION II: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.

Regional Director
Office of Surface Mining
530 Gay Street, Suite 500
Knoxville, Tennessee 37902
Telephone: (615) 637-8060

REGION III: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

Regional Director
Office of Surface Mining
Ohio and Penn. Streets
Indianapolis, Indiana 46204
Telephone: (317) 331-2600

REGION IV: Arkansas, Iowa, Louisiana, Missouri, Nebraska, Texas.

Regional Director
Office of Surface Mining
818 Grand Avenue
Kansas City, Missouri 64106
Telephone: (816) 374-2193

SMALL BUSINESS ADMINISTRATION CONTACT:

Chief, Property Sales and Assistance
Division
Small Business Administration
Room 635, 1441 L Street, N.W.
Washington, D.C. 20416
Telephone: (202) 653-6078

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2. **Federal Register**, Bureau of Land Management Land-Use Planning Regulations—43 CFR 1600, U.S. Department of the Interior, Vol. 44, No. 153, Washington, D.C.: August 7, 1979; pp. 46386-46401.
3. **Federal Register**, Federal Coal Management Regulations—43 CFR 3400, U.S. Department of the Interior, Vol. 44, No. 140, Washington, D.C.: July 19, 1979, pp. 42584-42652.
4. **Federal Register**, [Proposed] Coal Mining Operating Regulations—30 CFR 211, U.S. Department of the Interior, Washington, D.C.
5. Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.).
6. Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.).
7. U.S. Department of the Interior, Bureau of Land Management; Final Environmental Statement—Federal Coal Management Program; April 1979.

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